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IN THE CIRCUIT COURT OF THE STATE OF OREGON

5

FOR THE COUNTY OF MULTNOMAH

6

**NICHOLE KELLEY,**

Case No. **130609294**

7

Plaintiff,

**COMPLAINT FOR BREACH OF  
INSURANCE CONTRACT / UIM**

8

vs.

CLAIM GREATER THAN \$50,000; Prayer:  
\$146,420.43.

9 **NATIONAL UNION FIRE INSURANCE**

Filing fee \$505 – ORS 21.160.

10

**COMPANY OF PITTSBURGH,**

CLAIM NOT SUBJECT TO MANDATORY  
ARBITRATION

11

Defendant.

DEMAND FOR JURY TRIAL

12

13

FOR A CLAIM FOR RELIEF, Plaintiff NICHOLE KELLEY (“Nichole”) alleges:

14

**1.**

15

This claim is not subject to mandatory arbitration.

16

**2.**

17

At all times material, Nichole was a resident of Multnomah County, Oregon.

18

**3.**

19

On information and belief, Defendant NATIONAL UNION FIRE INSUANCE COMPANY OF PITTSBURG (“National Union”) is and was a Pennsylvania insurance company and corporation authorized to transact insurance business in the state of Oregon, including Multnomah County, at all times material.

20

**4.**

21

22

23

24

25

26

Employees and/or agents of Defendant National Union conduct its business in Oregon, including the selection of risk, preparation of insurance agreements, the collection of premiums,

COMPLAINT – Page 1

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1 and the handling and processing of claims.

2 **5.**

3 The 2008 Chevrolet Uplander described in the applicable paragraphs below was at all  
4 times material hereto insured under policy number CA 091-94-54, issued by Defendant National  
5 Union to its named insured National Mentor Holdings, Inc.

6 **6.**

7 On or about March 2, 2010, at approximately 5:30 p.m., Nichole was a restrained front  
8 seat passenger in the 2008 Chevrolet Uplander insured under policy number CA 091-94-54.

9 **7.**

10 At that time and place, the 2008 Chevrolet Uplander collided with a vehicle driven by  
11 Jonathan Rodriguez.

12 **8.**

13 The proximate cause of the collision was the negligent conduct of Jonathan Rodriguez in  
14 one or more of the following particulars:

- 15 a. Failing to keep a proper lookout;
- 16 b. Failing to maintain his vehicle under reasonable control;
- 17 c. Failing to yield the right of way;
- 18 d. Failing to avoid colliding with the 2008 Chevrolet Uplander;
- 19 e. Failing to drive at a speed reasonable and prudent under the circumstances.

20 **9.**

21 As a direct and proximate result of Jonathan Rodriguez's negligence, Nichole suffered  
22 and continues to suffer from injuries to her knees, ankles, neck, back and shoulders, pain,  
23 suffering, and interference with her normal and accustomed activities to her general, non-  
24 economic damages in an amount the jury determines to be fair, but not to exceed \$100,000, and  
25 has sustained the sum of approximately \$46,420.43 in past and future medical expenses, wage  
26 loss, and other economic damages.

10

Under the terms and conditions of policy number CA 091-94-54, Nichole was an insured passenger in the 2008 Chevrolet Uplander at the time it collided with the vehicle driven by Jonathan Rodriguez.

11.

Defendant National Union and its agents and employees had and have a fiduciary and contractual duty to Plaintiff to insure that she received benefits to which she was legally entitled in the event she suffered a covered injury or loss while an insured passenger in a covered vehicle, namely the insured 2008 Chevrolet Uplander.

12.

11 Plaintiff complied with all the legally valid and enforceable terms of the policy and  
12 performed all legally valid and enforceable conditions lawfully required of her under the policy.

13.

14 National Union policy CA 091-94-54 was in force on March 2, 2010, and provided  
15 underinsured motorist coverage to Nichole.

14.

17 National Union policy CA 091-94-54 is a motor vehicle liability policy issued for  
18 delivery in Oregon.

15.

Pursuant to ORS § 742.502(2)(a) and (b), National Union policy CA 091-94-54 shall have the same limits for uninsured motorist coverage as for bodily injury liability coverage unless a named insured in writing elects lower limits by signing a statement within 60 days of the election which acknowledges that a named insured was offered uninsured motorist coverage with limits equal to those for bodily injury liability; contains a brief summary of what uninsured and underinsured motorist coverages provide; states the price for coverage with limits equal to the named insureds' bodily injury liability limits and the price for coverage with the lower limits; and

1 the form of which is approved by the Oregon Department of Consumer and Business Services.

2 **16.**

3 National Union's named insured Mentor Holdings, Inc. did not elect lower limits in  
4 writing by signing a statement acknowledging that it was offered uninsured motorist coverage  
5 with limits equal to those for bodily injury liability; containing a brief summary of what  
6 uninsured and underinsured motorist coverages provide; stating the price for coverage with limits  
7 equal to the named insureds' bodily injury liability limits and the price for coverage with the  
8 lower limits; in a form approved by the Oregon Department of Consumer and Business Services.

9 **17.**

10 The amount of underinsurance coverage available to satisfy Plaintiff's claim under  
11 National Union policy CA 091-94-54 equals the limits for bodily liability coverage less the  
12 amount recovered from other motor vehicle liability policies.

13 **18.**

14 On March 2, 2010, Jonathan Rodriguez had liability insurance coverage of \$25,000.  
15 Nichole settled her claim against Jonathan Rodriguez for the \$25,000 policy limit on or about  
16 July 16, 2012.

17 **19.**

18 On July 31, 2012, Nichole sent National Union's agent Gallagher Bassett Services, Inc. a  
19 demand for arbitration under the underinsured motorist portion of policy number CA 091-94-54  
20 via certified mail. On August 20, 2012, Nichole submitted further information supporting that  
21 demand to Gallagher Bassett Services, Inc. The demand for arbitration and supporting  
22 information constituted proof of loss and afforded National Union and its agent Gallagher  
23 Bassett Services, Inc. an adequate opportunity for reasonable investigation.

24 **20.**

25 In the six months after proof of loss was provided, National Union did not accept  
26 coverage or consent in writing to submit the case to binding arbitration.

21.

2 Defendant National Union has breached its insurance contract under the National Mentor  
3 Holdings, Inc. policy by failing to pay Nichole underinsured motorist benefits.

22.

5 Plaintiff is entitled to recover reasonable attorney fees from National Union pursuant to  
6 ORS § 742.061.

7       **WHEREFORE**, Plaintiff Nichole prays for judgment against Defendant National Union  
8 for noneconomic damages in an amount determined by the jury to be fair and reasonable, but not  
9 to exceed the sum of **\$100,000**, for economic damages in an amount to be proven at trial, for her  
10 costs and disbursements incurred herein, for her reasonable attorney fees pursuant to ORS  
11 §742.061, and for any other relief the Court deems appropriate.

12 | P a g e  
Dated: June 25, 2013

## LAW OFFICE OF ROBERT G. DOLTON

14 Plaintiff hereby demands a jury trial.

By: Eric DeWeese  
Eric DeWeese OSB # 093279  
Of Attorneys for Plaintiff  
Trial Attorney: Same

16 By: Eric DeWeese  
17 Eric DeWeese OSB # 093279  
Of Attorneys for Plaintiff